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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1963

No. 112

ZEBEDEE HARDY,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

BRIEF FOR PETITIONER

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Opinions Below

The per curiam orders entered by the court below (R. 11, 15, 22) are not officially reported.

Jurisdiction

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1) and 28 U.S.C. § 2101(e). On April 29, 1963, this Court granted petitioner's motion for leave to proceed *in forma pauperis* and his petition for writ of certiorari (R. 24). 373 U.S. 902.

Statutes Involved

Relevant provisions of the statutes and Rules are set out in the Appendix.

Question Presented

Whether, in the federal system, equal opportunity to appeal requires that counsel appointed to represent an indigent faced with a district court finding of frivolity be furnished promptly a complete stenographic transcript of the trial proceedings.

Statement

On February 16, 1962, pursuant to jury verdict returned on January 15, 1962, petitioner was adjudged guilty as charged of narcotics violations under 26 U.S.C. § 4704(a) and 21 U.S.C. § 174, and sentenced by Judge Alexander Holtzoff to imprisonment "on Count One of this indictment for a term of not less than twenty months and not more than five years, and on Count Two for a term of five years, the sentences to run concurrently." *United States* v. *Zebedee Hardy*, Crim. No. 822-61, in the United States District Court for the District of Columbia. On February 19, 1962, Judge Holtzoff denied petitioner's application for leave to proceed without prepayment of costs, certifying that "the appeal is frivolous and not taken in good faith."[1]

On March 16, 1962, petitioner filed in the court below a petition for leave to appeal *in forma pauperis* and affidavit in support thereof (R. 1-2). On March 19, 1962, Judge, then Chief Judge, Miller appointed the undersigned counsel to represent petitioner and allowed thirty days to

[1] The office of the Criminal Clerk, United States District Court, has declined, without payment of costs, to supply to counsel appointed by the Court of Appeals a copy of the indictment, of the transcript of the sentencing portion of the proceeding which is in the District Court file, the judgment and commitment, and the affidavit in support of petitioner's application, with Judge Holtzoff's ruling thereon.

file a memorandum in support of the petition (R. 3). On April 17, 1962, petitioner, by counsel, filed a motion for an order directing the furnishing of a stenographic transcript at the expense of the United States, and for an extension of time (R. 4). On April 24, 1962, the United States Attorney filed an opposition predicated on the absence of "specific factual allegations" of error and the fact that counsel had not consulted "either the trial judge or the court-reporter" (R. 7). On May 11, 1962, the court entered a per curiam order (R. 11) directing:

> "that petitioner be, and he is hereby, allowed to proceed in forma pauperis to the extent of having the stenographic transcript of the testimony and evidence presented by the government prepared at the expense of the United States and that the time for filing a memorandum in support of the petition for leave to prosecute an appeal without prepayment of costs be, and it is hereby, extended until 30 days after preparation of the stenographic transcript. *Coppedge* v. *United States,* No. 157, October Term, 1961, *Supreme Court of the United States,* April 30, 1962."

On May 21, 1962, petitioner filed a motion for clarification or rehearing (R. 12-14). By per curium order that motion was denied (R. 15).

On September 20, 1962, petitioner filed a motion for an order directing furnishing of stenographic transcript of balance of district court proceedings or, in the alternative, for entry of an order denying leave to appeal (R. 18). On September 26, 1962, the United States Attorney advised the Court that the United States did not intend to submit an opposition (R. 21). On October 24, 1962, the court, Judges Miller and Bastian, entered a per curiam order (R. 22) denying "petitioner's motion for stenographic tran-

script of the balance of the proceedings in the District Court." The order noted that Judge Fahy "would grant the motion."

After the petition for leave to proceed in this Court was filed on November 30, 1962, the court below issued its opinion in *Ingram* v. *United States*, —— U.S. App. D.C. ——, 315 F.2d 29 (1962). It explained that to "implement" *Coppedge* it had adopted "a new procedure" under which counsel in *forma pauperis* cases are furnished upon appointment only that "portion of the transcript of the proceedings which relates to the conclusory allegations" formulated by the indigent defendant *pro se*. 315 F.2d, at 30-31. Thereafter, additional portions of the transcript will be furnished only if counsel "can in good conscience advance other claims of error requiring additional portions of the transcript," or demonstrate "complete inadequacy of the sources of information" by "detailed recitation of the results" of comprehensive investigation. *Id.*, at 31. These conditions are imposed because "the *Coppedge* case does not hold that a transcript must be furnished to enable a petitioner to search for unsuspected errors." *Id.*, at 32.

In the light of this opinion, on December 17, 1962, petitioner filed a motion for leave to supplement the petition.

Summary of Argument

An indigent convict in the federal system, faced with a district court finding of frivolity, is entitled to the benefit of a complete stenographic transcript as of right because a transcript is available as of course to any defendant with money, and denial deprives the indigent of the advantage of the "plain error" rule. To condition and restrict the size of transcript available to an indigent upon claim of error, where no such condition or restriction con-

fronts a defendant with money, denies indigents (1) the right to appeal, (2) the right not to be discriminated against for poverty and (3) the right to effective assistance of counsel. *Douglas* v. *California*, 372 U.S. 353 (1963).

There is no substitute for a complete stenographic transcript in the search for lurking error. Appointed counsel and the court must both make that search before an indigent's appeal can constitutionally be dismissed for frivolity. *Ellis* v. *United States*, 356 U.S. 674. To deny or withhold the necessary transcript is invidiously to burden and hamper indigents' counsel and discriminatorily to delay and thwart indigents' appeals.

ARGUMENT

An Indigent Defendant, Faced With a District Court Finding of Frivolity, Is Entitled to a Complete Stenographic Transcript as a Matter of Right.

In contemporary focus, the issue is whether the transcript practice of the court below deprives indigents of the right to have their appeals tested for frivolity "on the same basis" (*Draper* v. *Washington*, 372 U.S. 487, 499 (1963)), as non-indigents. The court below sidestepped and ignored the equality issue. It conditioned and limited availability of a stenographic transcript in indigents' cases to claims of error, whereas no such barrier or limitation exists in non-indigents' cases.

Under the Court Reporter Act, 62 Stat. 922, 28 U.S.C. 753(b), a complete stenographic transcript is available to any defendant in the federal courts who can pay the price.[1] *Stephens* v. *United States*, 289 F.2d 308 (5 Cir., 1961).

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[1] "Stenographic transcripts in the federal courts cost $0.56 per page for the first copy and $0.30 per page for additional copies." *Coppedge* v. *United States*, 369 U.S. 438, 443, n. 6 (1962).

Congress made provision for stenographic transcripts in all cases "to prevent disputes and questions of veracity all too common under the old system". *Stansbury* v. *United States*, 219 F.2d 165, 169, n. 6 (5 Cir., 1955). Consequently, a stenographic transcript is potentially available in all cases where it is charged that an appeal is frivolous.

By virtue of Rule 52(b) of the Federal Rules of Criminal Procedure, frivolity is negated by the existence of "plain error", unnoticed below and unclaimed. Compare *Surratt* v. *United States*, 104 U.S. App. D.C. 380, 262 F.2d 691, 692 (dissenting opinion) with *Surratt* v. *United States*, 106 U.S. App. D.C. 49, 269 F.2d 240 (1959), reversing the judgment of conviction. Any defendant with money can guard against oversight of "plain error" in the Court of Appeals by purchasing a complete transcript. The policy of the court below deprives indigent defendants of that safeguard. In the case of indigents, only those portions of the transcript can be searched for unnoticed error which were deemed by the Court of Appeals to relate to errors explicitly claimed.

In justifying this on the theory that it could require counsel for indigents "to appeal upon a bystander's bill of exceptions, or upon an agreed statement of facts" (*Ingram*, 315 F.2d, at 32), the court below ignored that such a requirement would be rank discrimination against indigents. Defendants with money are not required to defend a charge of frivolity on less than a complete stenographic transcript. To require indigents to do so is to deprive them of (1) the right to appeal, (2) the right not to be invidiously discriminated against for poverty and (3) the right to effective assistance of counsel.

It should go without saying that indigents are as much entitled to the protection of the "plain error" rule as defendants with money. Equal protection considerations,

which permeate our constitutional philosophy (*Hurd* v. *Hodge*, 334 U.S. 24, 34-36 (1948)), require the United States "to provide the indigent as adequate and effective an appellate review as that given appellants with funds." *Draper* case, 372 U.S., at 496; *Coppedge* v. *United States*, 369 U.S. 438, 447 (1962); *Douglas* v. *California*, 372 U.S. 353, 355-358 (1963). "Destitute defendants must be afforded as adequate appellate review as defendants who have money enough to buy transcripts." *Griffin* v. *Illinois*, 351 U.S. 12, 19 (1956).

> "Particularly since litigants *in forma pauperis* may, in the trial court, have suffered disadvantages in the defense of their cases inherent in their impecunious condition, is appellate review of their cases any less searching than that accorded paid appeals inappropriate." *Coppedge*, 369 U.S., at 450.

That indigents, unlike defendants with money, are required to make application for leave to appeal, cannot justify discriminatory restriction of their power to defend against a charge of frivolity. *Coppedge* holds that on the frivolity issue the Government must carry the same "burdens of proof and persuasion" in indigent as in non-indigent cases:

> "Since our statutes and rules make an appeal in a criminal case a matter of right, the burden of showing that that right has been abused through the prosecution of frivolous litigation should, at all times, be on the party making the suggestion of frivolity. It is not the burden of the petitioner to show that his appeal has merit, in the sense that he is bound, or even likely, to prevail ultimately. He is to be heard, as is any appellant in a criminal case, if he makes a rational argument on the law or facts. It is the burden of the Government, in opposing an attempted criminal appeal *in forma pau-*

> *peris*, to show that the appeal is lacking in merit, indeed, that it is so lacking in merit that the court would dismiss the case on motion of the Government, had the case been docketed and a record been filed by an appellant able to afford the expense of complying with those requirements." (369 U.S., at 447-448.)

Denial to indigents of a complete transcript deprives them of the benefit of the plain error rule, "disabling them from bringing to the notice of [the] appellate tribunal errors of the trial court" (*Griffin* v. *Illinois*, 351 U.S. 12, 23), which might defeat the claim of frivolity. "The indigent, where the * * * errors are hidden, has only the right to a meaningless ritual, while the rich man has a meaningful appeal." *Douglas* v. *California*, 372 U.S. 353, 358 (1963). This is the "invidious discrimination" *Griffin* and *Coppedge*, 369 U.S., at 445, note 13, forbid.

It follows that in the federal system an indigent defendant confronted with the "predictable finding of frivolity" (*Draper* case, *supra*, 372 U.S. at 498), must be provided with a complete stenographic transcript at the time counsel is appointed. Not only is this necessary to assure that the right of review on the merits will not be denied in cases of substance, and to avoid invidious discrimination for poverty, it is essential to effectuate the Sixth Amendment's guarantee of effective assistance of counsel. *Ellis* v. *United States*, 356 U.S. 674-675 (1958), holds that an applicant for leave to appeal *in forma pauperis* is entitled to "adequate representation by counsel", who, in "the role of advocate", must make a "conscientious", diligent, investigation of "the possible grounds of appeal", and that leave to appeal should not be denied unless counsel finds no non-frivolous issue and the court "agrees with counsel's evaluation of the case." The indigent is entitled to appeal as of right if, with the assistance of counsel, he "presents any issue for the court's

consideration not clearly frivolous." *Coppedge* case, *supra*, 369 U.S., at 446. Without a complete transcript, adequate investigation of one possible ground of appeal—unnoticed error—is not only unfeasible but virtually impossible.

Logic and experience alike attest that there can be no substitute for a complete stenographic transcript in unearthing lurking error. If the error was not noticed by either trial counsel or judge, it is unlikely if not impossible that inquiry of them will uncover it. And hearing a reporter read his notes is no substitute for leafing and pondering a stenographic transcript. "Frequently, issues cannot even be seen—let alone assessed—without reading an accurate transcript." Boskey, *"The Right to Counsel in Appellate Proceedings,"* 45 Minn. L. Rev. 783, 793 (1961). Denial of a complete transcript necessarily results in "depriving defendant of the possibility of reversal on the ground that the record contains 'plain error' of which the defendant was unaware and of which he might have had the benefit had he possessed means adequate to purchase a complete transcript." *Report of the Attorney General's Committee on Poverty and the Administration of Federal Criminal Justice* (1963), p. 101.

Because of the plain error rule, paid appellate counsel in a federal case would never forego perusal of a complete stenographic transcript. "It defies common sense to think that a moneyed defendant faced with long-term imprisonment and advised by counsel [of the plain error rule] will [risk dismissal for frivolity or jeopardize his chances for reversal on] appeal merely to save the cost of a transcript. The [Court of Appeals'] procedure for indigents, therefore, cannot be justified as an attempt to equalize the incidence of appeal as between indigents and non-indigents." *Draper* case, *supra*, 372 U.S. at 495, n. 4. No solvent defendant would direct his lawyer to embark upon an investigation

through sources outside the transcript of "the circumstances giving rise to the indictment, the theory of the prosecution, the defenses raised by petitioner, the witnesses presented by each party, and the pertinency of their testimony, the objections made by defense counsel * * *" (*Ingram* case, 315 F.2d at 32), in order to save money, for the cost of a transcript would be trifling in comparison with the cost of investigation. Moreover, no self-respecting lawyer would, for a paying client, undertake such useless, distasteful, make-work. A solvent defendant would supply his counsel with as much of the transcript as counsel desired to examine or he would not be represented by counsel.

Nothing in the "good faith" requirement warrants denial to indigents of as complete a transcript as defendants with money can furnish their counsel. Lawyers for solvent defendants are not expected to take frivolous appeals for a fee, and conscientious lawyers do not do so. Without studying a complete transcript retained appellate counsel is never in a position to know or to advise his client that appeal would be futile. Appointed appellate counsel for an indigent is in no better position to so advise the Court. *Ellis* forbids appellate counsel to advise the Court that appeal would be futile unless he has examined a complete transcript. A paying defendant can obtain a complete transcript for his lawyer without showing inquiry or investigation of any kind. It is unconstitutional and invidious to exact such a showing from an indigent one. *Douglas* v. *California*, 372 U.S. 353, 358 (1963).

Moreover, as the Attorney General's Committee points out (*Report*, p. 102):

> "The efforts of assigned counsel to search out, in the absence of an adequate transcript of the trial, a sufficient basis for granting leave to appeal is wasteful not only of the lawyer's time, but that of the officials

> whom he must contact and interview for this purpose. * * * It is not far from the truth to say that the federal system seeks to avoid the expenses of supplying transcripts to all financially disadvantaged defendants desiring to appeal by shifting the burdens to lawyers required to serve without compensation or reimbursement of expenses. * * * "

It is no answer to say that this is necessary to avoid saddling a heavy financial burden on Government. Cost of a transcript to the Government must inevitably be less than the cost in time of handling indigents' cases, even with the aid of a transcript, is to appointed counsel. If the imperative of justice for indigents requires courts to burden appointed counsel with the duty of diligently studying a transcript, it must also require them to impose upon the Government the cost of supplying the transcript to study. Cf. *United States* v. *Germany*, 32 F.R.D. 421 (N.D. Ala., 1963).

Of course, requiring the Government to supply a transcript to every indigent confronted with a claim of frivolity will put the Government to expense without any assurance that substance will be found. But that is unavoidable, for nothing short of study of a complete transcript will disclose whether unnoticed plain error was committed or not. In this respect furnishing a complete transcript before deciding that an indigent has no right to appeal is like having a trial before rendering judgment. "Lawsuits often prove to have been groundless; but no way has been discovered of relieving a defendant from the necessity of a trial to establish the fact." *Myers* v. *Bethlehem Shipbuilding Corp.*, 303 U.S. 41, 51-52 (1938).

The choice lies between imposing on Government the cost of furnishing a complete stenographic transcript in all cases and denying leave to appeal although plain error may

exist. We think there is really no alternative: governmental economy cannot be weighed in the same judicial scale with "equal treatment for every litigant before the bar." *Coppedge*, 369 U.S., at 447.

The court below does not articulate the premise which leads it to deny indigents the same opportunity to "search for error" as defendants with money have. If the premise is that the chance of unearthing plain error is so slight that it does not warrant the expense to the Government, the short answer is that the imperative of justice will not permit even one conviction to go unreviewed which would be reviewed if the defendant had money.

If the premise is that the prosecution should not be asked to finance adversaries' efforts to upset convictions, it proves too much, for on that premise the Government should not be required to pay for any portion of a transcript. More broadly, the answer is that such a premise overlooks the overriding interest our Government must have in the fair administration of justice. *Coppedge* case, 369 U.S., at 448-449. As recently stated by the Attorney General's Committee (*Report*, pp. 10-11):

> "The essence of the adversary system is challenge. The survival of our system of criminal justice and the values which it advances depends upon a constant, searching, and creative questioning of official decisions and assertions of authority at all stages of the process. The proper performance of the defense function is thus as vital to the health of the system as the performance of the prosecuting and adjudicatory functions. It follows that insofar as the financial status of the accused impedes vigorous and proper challenges, it constitutes a threat to the viability of the adversary system. • • • Persons suffering such disabilities are incapable of providing the challenges that are indispensable to satis-

> factory operation of the system. The loss to the interests of accused individuals, occasioned by these failures, are great and apparent. • • • Beyond these considerations, however, is the fact that the conditions produced by the financial incapacity of the accused are detrimental to the proper functioning of the system of justice and that the loss in vitality of the adversary system, thereby occasioned, significantly endangers the basic interests of a free community."

If the premise is that the finding of frivolity by the trial judge is entitled to weight, why should the presumption vanish before a mere "vague and conclusory" claim of error? *Ingram* case, 315 F.2d, at 31. If an indigent is entitled to portions of a transcript which may produce substantiation of a "vague" claim, why is he not equally entitled to other portions which may disclose reversible error? Since search for either substantiation or unnoticed error may produce an "issue for the Court's consideration not clearly frivolous", one quest can no more evidence "bad faith" than the other. *Coppedge* case, *supra*, 369 U.S., at 445, 446. Surely, "the conclusion of the trial judge that an indigent's appeal is frivolous is • • • inadequate substitute for the [opportunity to unearth error] available to non-indigents • • • ." *Draper* case, *supra*, 372 U.S., at 499. If "full appellate review" (*ibid.*) is not to be aborted, the certificate of the trial judge can be given weight only on the question of the indigent's good faith in pleading poverty. If the plea of poverty is made in good faith, Government must afford the indigent the same opportunity as a non-indigent to "present any issue for the [appellate] court's consideration". *Coppedge* case, 369 U.S., at 446.

The court below doles out transcript with an improper measure because it misconceives the function to be served.

It still adheres to the view that an indigent is entitled to a transcript only to "make manifest [a] claim of error". *Ingram case*, 315 F.2d, at 30; *Whitt* v. *United States*, 104 U.S. App. D.C. 1, 5, 259 F.2d 158, 161 (1958), and Rule 33(b)(2)(i) of the Rules of the court below, Appendix, *infra*. It relies on the passage from *Coppedge* which speaks of cases where "the claims made or the issues sought to be raised by the applicant are such that their substance cannot adequately be ascertained from the face of the defendant's application." 369 U.S., at 446.

But the evident purpose of that passage is to distinguish between petitions which on their face show "that the applicant will present issues for review not clearly frivolous" and all other cases. In the former, the reviewing court must proceed immediately "to consideration of the appeal on the merits." In the latter, the court may screen for frivolity, but not until it has provided "the would be appellant with both the assistance of counsel and a record of sufficient completeness to enable him to attempt to make a showing that the District Court's certificate of lack of 'good faith' is in error." The showing can consist of presentation of "any issue * * * not clearly frivolous", 369 U.S. 446; cf., *Draper* case, 372 U.S. at 498-499. "Any issue" does not mean "any issue presented in the petition." The point of providing *both* counsel *and* an adequate record is to empower the indigent "to attempt to make a showing that the District Court's certificate of lack of 'good faith' is in error," not merely that his own "conclusory allegations" have substance. Want of substantial allegations could not possibly establish lack of good faith, for leave to appeal must be allowed if unalleged error exists. The size of the transcript which must be made available to enable indigent's counsel to establish "good faith", therefore, cannot be measured by the indigent's allegations. Furnishing a tran-

script bearing only on issues raised by the unqualified defendant leaves him as insufficiently protected as refusal to appoint counsel or to provide any transcript at all.

To attach restrictive significance to the indigent's formulation of claims and issues is to make a mockery of *Coppedge's* purpose—"equal treatment for every litigant before the bar". 369 U.S., at 447. An indigent convict who is not a lawyer is no more qualified to frame issues on appeal than he is to determine whether there is substance to claims of error he may make. It is absurd to expect him to discover reversible error overlooked by court and counsel at his trial. If he could do these things, there would be no need to appoint counsel on his application for leave to appeal. But *Coppedge* requires that counsel be appointed on the application to assure that the indigent is not prejudiced by lack of professional assistance in challenging the District Court's finding. That objective is defeated by tying counsel to the indigent's *pro se* claims. Cf. *Douglas* v. *California*, 372 U.S., at 358. Right to counsel is no more satisfied by a bobtailed appointment than by a "formal" one. *Avery* v. *Alabama*, 308 U.S. 444, 446 (1940). If "equal treatment for every litigant before the bar" demands that courts supply indigent defendants with counsel, it must also demand that courts accord their counsel the same opportunity paid counsel have to search and ponder the entire stenographic transcript for non-frivolous grounds of appeal, unrestricted by their client's untutored claims of error.

To hold otherwise is to flout the *Coppedge* holding that good faith in this context is not confined to "persons who, in good conscience, could insist on their innocence". 369 U.S., at 445. The request of an indigent's attorney for a transcript to determine whether the record holds "any issue not frivolous" not only cannot "genuinely be charac-

terized" as "bad faith" (*id.*); it is absolute proof of "good faith".

Nothing in the language of the affidavit requirement (28 U.S.C. § 1915) suggests that an indigent's claims or statements can control appealability or the scope of review on the merits. The affiant is required to state no more than the "nature of the action, defense or appeal and affiant's belief that he is entitled to redress." There is no requirement of specification of errors or issues to be urged. Mere identification of the conviction sought to be appealed and a statement that affiant believes himself entitled to reversal suffices. On such a statement, the indigent is entitled to appeal unless he cannot present a non-frivolous issue. To require greater specificity in the affidavit or to give weight to surplusage, is to go "beyond the corners of 28 U.S.C. § 1915" (*Coppedge* case, 369 U.S., at 446), in the wrong direction.

For the same reason § 1915 cannot be relied on to justify requiring indigents' counsel to advance "other claims of error" before obtaining "additional portions of the transcript." The task of the indigent's lawyer, as *Ellis* holds, is to reach a conclusion whether any substantial question can be presented after conscientious investigation of all possible grounds for appeal. That job he cannot do without examining a complete transcript. Nothing in § 1915 authorizes a court to impose on indigents' counsel a burden of extra-transcript investigation and interim reporting or to supervise its performance. Cf. *Coppedge*, 369 U.S., at 457 (concurring opinion). Imposition simply discourages acceptance of *in forma pauperis* assignments and perpetuates delay and discrimination in the processing of indigents' appeals. *Id.*, at 458. Ironically, in the end, the need for a complete transcript is not avoided for, under *Ellis*, the Court of Appeals could not properly deny leave to appeal without satisfying itself that no reversible error

exists, and this it could not possibly do without a complete transcript.

Of course, an indigent is entitled to a complete stenographic transcript only in those systems in which such a transcript is necessary "to provide the indigent as adequate and as effective an appellate review as that given appellants with funds". *Draper* case, *supra*, 372 U.S., at 496. In States where error unnoticed below or unclaimed is not noticeable on appeal, portions of the proceedings wholly unrelated to contentions properly preserved need not be transcribed. And in States which do not have the equivalent of a Court Reporter Act, official transcripts need not be provided for indigents which would have been unavailable to a defendant able and willing to pay. But, *cf.* Rule 65-1, Rules of the Supreme Court of Illinois, Ill. Stat. Ann. (*Smith-Hurd*, 1956), c. 110, § 101.65-1. The obligation of the State is only to put the indigent in as good a position to appeal as the defendant with counsel and money. This, we take it, is all that the quotation from *Griffin* relied on below (*Ingram*, 315 F.2d, at 32), means.

Johnson v. *United States*, 352 U.S. 565, 566 (1957), assumed that the burden rested on the indigent to show that his "grounds for seeking an appeal * * * are not frivolous", rather than on the Government to show that there is no substantial ground. The restrictive language of *Johnson* therefore fell with rejection of its premise in *Coppedge*, pp. 7-8, *supra*.

Conclusion

For the foregoing reasons it is respectfully submitted that the Court below should be directed to grant petitioner appropriate relief.

Respectfully submitted,

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